

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES  
DEPARTMENT 308 HON. CHARLES W. MC

COY, JUDGE

RICHARD BOEKEN, )  
                       )  
PLAINTIFF,         )  
                       )  
VS.                 ) SUPERIOR

COURT

BC 226593

PHILIP MORRIS, INCORPORATED,         )  
A CORPORATION; INTERNATIONAL HOUSE     )  
OF PANCAKES, INCORPORATED, A          )  
CORPORATION,                             )  
   )  
   )  
DEFENDANTS.                             )  
   )

REPORTER'S DAILY TRANSCRIPT OF

PROCEEDINGS

THURSDAY, MAY 17, 2001

P.M. SESSION

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OFFICIAL REPORTER

I N D E X

THURSDAY, MAY 17,

2001..... 5895:3

1:45

P.M..... 5895:7

ARGUMENT (RESUMED)

BY MR.

PIUZE..... 5895:21

5895

1 CASE NUMBER: BC 226593  
2 CASE NAME: BOEKEN v. PHILIP MORRIS  
3 LOS ANGELES, CALIFORNIA Thursday, MAY 17, 2001  
4 DEPARTMENT 308 HON. CHARLES W. MC COY,

JUDGE

5 APPEARANCES: (AS NOTED ON TITLE PAGE.)

6 REPORTER: LINDA STALEY, CSR NO.

3359, RMR, CRR

7 TIME: 1:45 p.m.

8  
9  
10  
11  
12                   THE COURT: Our jury panel is with us;  
counsel are  
13                   present as well.  
14                   Good afternoon, counsel  
15  
16                   (Chorus of good afternoon's.)  
17  
18                   THE COURT: Good to see you.  
19                   Mr. Piuze.  
20  
21                   ARGUMENT (resumed)  
22                   by MR. PIUZE:  
23                   Well, Your Honor, I figure when two  
of the  
on teen  
got to  
boring  
think  
5896  
votes for  
But maybe  
think is  
But with  
important. I  
however  
that have  
kind of a  
few jurors  
years.  
Your Honor.  
please.  
this teen  
not for the  
what  
Merlo, number  
19

jurors don't come back, maybe I spent too much time  
smoking.  
And there's so much stuff here, I've  
make a command decision, and the decision is, risk  
some of you by banging away at this stuff again. I  
it's super important. So I mean, there's so many  
that. And let it slide in order not to bore you.  
one of these documents or one of the things that I  
important here slipped during the trial.  
So I'm going to vote for boring you.  
an asterisk. I think this stuff here is super  
think that out of all of the tens of thousands or  
many juries there have been in the United States  
ever looked at anything in a civil case, ever, any  
civil case, ever, that you are one of the extreme  
ever to lay eyes on stuff like this in hundreds of  
MR. LEITER: I'm going to object to that,  
THE COURT: Sustained.  
MR. PIUZE: Can you turn that on for me,  
Okay. The purpose of showing you  
smoking thing, which I'm going to do quickly, is  
truth of the matter stated in here. It is to show  
professor Cobbs Hoffman, number one, and Ellen  
two, have to think or what they've avoided thinking

or how

20           they responded to certain of these charges.  
21           Ms. Merlo, don't forget, ascribes and  
22           subscribes to a clipping service, and because she's  
what she       23           does in the corporation, anything that the press  
writes about     24           comes to her attention. So she sees it. She sees  
it           25           automatically. She looks at it. And she was up  
here to       26           respond to some of these things. So I'll just take  
a couple      27           minutes, go through it. Go on to the next topic.  
of 1999,       28           This is the 1999 -- on October 31st

5897

1           the San Diego union. And this is a guy named  
Pierce, who's   2           at the ucsd. And professor Cobbs Hoffman was  
familiar with   3           him. He surveyed teen smokers to find out what  
made them      4           smoke.

(Paraphrased reading:)

7           Most popular response:  
8           Cigarette ads, 2 to 1. Anti-smoking ads, he  
9           says, are merely a high profile smoke  
screen,       10           probably intended to shield big tobacco from  
11           lawsuits. Smoking ads cost the industry

over

12           \$5 billion year.

13

14           L.A. times, 1998, in May.  
15           (Paraphrased reading:)

16

17           Smoking about image. 3,000  
18           teenagers will light up for the first time  
19           today. I want to look cool.

20

21           San Diego, March, 2000.  
22           (Paraphrased reading:)

23

24           City council down there in  
25           national city was requiring an ordinance  
26           requiring merchants to keep cigarettes and  
27           other tobacco products behind the counter

and

28           when within 1,000 feet of schools. The law

5898

1           could require that stores near schools keep  
2           tobacco ads away from products, like candy.

3           We know that the tobacco  
4           industry strategically places their products  
5           next to products that appeal to -- excuse  
6           me -- next to products that appeal to  
7           children, particularly in stores near  
8           schools, says Deborah Kelley, American lung  
9           association V.P. for governmental relations.  
10           That's why we feel there has to be a visual  
11           separation to sever the connection between

12 the 3 musketeers and the Marlboro man.  
13  
14 San Diego, may 18, 2000.  
15 (Paraphrased reading:)  
16  
17 Cigarette makers have  
18 increased advertising in magazines with  
large  
19 teen audiences since 1998.  
20  
21 San Diego, November 30, 2000.  
22 (Paraphrased reading:)  
23  
24 State school superintendent  
25 delane eastin and local American lung  
26 association are urging schools to reject  
free  
27 textbook covers from cigarette maker  
28 Philip Morris.  
5899  
1 November 29, 2000, L.A. times.  
2 (Paraphrased reading:)  
3  
4 Shasta county high school  
5 district gets handout 1,000 philip morris  
6 book covers with Philip Morris written on  
7 cover. District disposed of them.  
8  
9 L.A. times, November 17th, 2001.  
10  
11 Philip Morris stops sending  
12 free book covers to California public  
schools  
13 but has not agreed to recall them.  
14 The covers were an attempt by  
15 Philip Morris to promote its corporate  
16 identity and, consequently, in cigarettes to  
17 children through illustrated book covers,  
18 said attorney general bill Lockyear.  
19  
20 Ms. Merlo told us, you, us, all of us  
here,  
21 that the new Philip Morris -- first of all, denying  
that the  
22 old Philip Morris ever targeted kids, ever --  
looking at  
23 those blow-ups that I showed you this morning and  
say, who  
24 can explain them, who knows why, but that sure  
wasn't us. It  
25 was someone that snuck into our building at night.  
26 But if we did, we would never do it  
anymore.  
27 Our stockholders wouldn't allow it. We would never  
do it  
28 anymore. And I asked her -- and I showed her some  
of these  
5900  
1 very things here -- would the American lung  
association trust  
2 Philip Morris any further than they could throw it?  
3 No.  
4 Would the committee for tobacco-free

kids trust

5 Philip Morris any further than it could throw it?

6 No.

7 How about the State Department

superintendent

8 of schools here in California -- no -- bill

lockyear?

9 No. They wouldn't trust us.

10 But, ladies and gentlemen, you, you

should

11 trust us.

12 So that's what I have to show about

kids and

13 smoking. No kids; no smoking. No smoking; no

profits.

14 Ellen Merlo saying, we will stop

selling to

15 kids and targeting kids is like that guy in 1954

saying, if

16 this product is harmful, we'll stop, we'll got out

of the

17 business.

18 It's like Bible saying in 1998 in

Minnesota

19 under oath, if he thought one person died from this

-- what a

20 stupid thing to say, if I thought one person --

where's he

21 been hiding -- died from this, we'd be out of

business.

22 We'll stop business.

23 That's ridiculous. It's an insult to

the

24 intelligence of anyone.

25 Let me take a little historical run

here on

26 some of these things that were being said by --

27 Mr. Boeken was a young man, and when

there was

28 some sort of a knowledge out there that he

absolutely should

5901

1 have had, should have figured out, should have

felt, let's go

2 through a little historical stuff here. Please.

3 Here is March of '65. This is the

tobacco

4 institute.

5 The cigarette manufacturers told

Congress

6 through the chairman of the board of R.J. Reynolds,

who was

7 appearing for the whole industry, spokesman for

nine

8 cigarette manufacturing companies, expressed

industry

9 opposition to regulation.

10 (Paraphrased reading:)

11

12 The cigarette industry's

13 position is based on three bases.

14 First, the industry is

15 profoundly conscious of the questions

concerning smoking and health.

Second, many scientists are the opinion that it has not been established that smoking causes lung cancer or any disease.

Third, a great deal more research needs to be done.

This is a transition document. I'll lawyers were in charge of medical and/or scientific at the tobacco companies. Decisions on whether or legitimate scientific testing, legitimate tting were not made with the scientists or doctors who been in charge of them, or at least not totally decisions were influenced by attorneys almost all The attorneys got involved because, wanted to preserve some sort of a litigation right now, today; whether today was going to be or '95 or 2005 didn't matter. But rather than products in order to guard health, what was being was litigation strategy, and what was being influencing Congress. So this is one of the starts talking about that, and there'll be others. This is an important document, right October 14, 1969. And this is Mr. Wakeham. He was the top two guys across the top line.  
(Paraphrased reading:)

The scientific expertise of the industry, because of the liability suit situation, has not been permitted to make a contribution to the problem, a contribution which I believe was and is vital because the industry scientists are willing to consider the scientific problem from the point of of the industry rather than from the of the Public Health agency.

And then (paraphrased reading):

At the beginning of our support of smoking and health research, this

2 failure may have been connected with our  
3 consistent denial of the statistics and our  
4 continued assertion that this is nothing to  
5 the cigarette causation hypothesis.  
6

7 1967. This to Clements. Clements is  
with the

8 tobacco institute.

9 (Paraphrased reading:)

10  
11 The tobacco industry has a  
12 very serious problem in the current tobacco  
13 health controversy. It is rapidly becoming  
14 worse. Prior to 1954, the problem was

mainly

15 a public relations problem, and our  
opponents

16 had no effective base to work from. In  
17 December of '53 with the publishing of the  
18 Wynder, graham and Croninger paper, the  
19 problem not only intensified, but became a  
20 scientific one.

21 In the last 14 years, this  
22 problem has become much more complex, more  
23 involved and much more serious. Although  
24 this problem has public relations, business,  
25 legal and political components, it is  
26 basically a scientific one. So far,

however,

27 the major efforts of the industry to cope  
28 with this probe have been other than

5904

1 scientific.

2

3 Here's 1970. This is Mr. Wakeham.

This is

4 Philip Morris. December.

5 (Paraphrased reading:)

6  
7 It has been stated that CTR

is

8 a program to find out "the truth about  
9 smoking and health." What is truth to one

is

10 false to another. CTR and the industry have  
11 publicly and frequently denied what others  
12 find as "truth." Let's face it. We're  
13 interested in evidence which we believe  
14 denies the allegation that cigarette smoking  
15 causes disease. If the CTR program is aimed  
16 in this direction, it is, in effect, trying  
17 to prove the negative, that cigarette

smoking

18 does not cause disease. Both lawyers and  
19 scientists will agree that this task is  
20 extremely difficult, if not impossible.

21  
22 Which gets me to what I believe --

excuse me --

23 what gets me to the most important exhibit in this

case. And

24 this is the proper proposal of 1972. And this is

the height

25 of hypocrisy right here.  
26 Dr. Benowitz talked about the fact  
that when  
27 you've got someone who is addicted, a person who's  
addicted  
28 is going to tell themselves stories, and whether  
you call it,  
5905  
1 rationalize or whatever you call it, someone who's  
hooked is  
2 looking for a reason to believe that they can  
continue in  
3 their conduct. And I think that's something that's  
probably  
4 disputed here. Someone that's hooked is more apt  
to believe  
5 a story than someone who isn't.  
6 This is the hook. This is where they  
talk  
7 about the hook. Right here.  
8 (Paraphrased reading:  
9  
10 For nearly 20 years, this  
11 industry has employed a single strategy to  
12 defend itself on three major fronts --  
13 litigation, politics and public opinion.  
14 While the strategy was  
15 brilliantly conceived and executed over the  
16 years helping us win important battles, it  
is  
17 only fair to say that it is not -- nor was  
it  
18 intended to be -- a vehicle for victory. On  
19 the contrary, it has always been a holding  
20 strategy, consisting of . . .  
21  
22 Now, obviously, during the course of  
this  
23 trial -- I'll put that where the jury can see it.  
And during  
24 the course of this trial -- this is the long time  
line.  
25 This will not go to the jury, and so  
I'm going  
26 to bring it out in a little while and discuss as it  
related  
27 to Mr. Boeken.  
28 But what they say in writing for the  
world to  
5906  
1 see is that they are going to try to create a doubt  
in  
2 People's minds about what these scientists say  
without  
3 actually denying the charge.  
4 Now, please think about this here.  
Whether  
5 it's Richard Boeken or the 5 million or 10 million  
or  
6 30 million other smokers that have a heck of a lot  
of trouble  
7 quitting, one of the reasons they have a little  
trouble

8 quitting or a heck of a lot of trouble quitting is  
because  
9 there was doubt forever and ever purposely  
implanted in their  
10 brains about whether it was really true what  
everyone said;  
11 is it really true that smoking causes lung cancer?  
12 As recently as last week, Dr.  
Hoshizaki said,  
13 well, you know, only 20 percent get it, 80 percent  
don't. We  
14 can't get it in animals, we can't put a human tumor  
in  
15 animals, we still can't. I mean, these were  
important  
16 questions. We could never figure these things out.  
I, as a  
17 biologist professor at the university, couldn't  
figure these  
18 things out. And we still don't have answers to  
these  
19 questions.  
20 Well, these questions were out there  
and people  
21 that want to, need a reason to, make believe or  
have  
22 something to grab onto were hand fed this starting  
way before  
23 1972.  
24 This is what you're going to be  
reading. The  
25 judge will read jury instructions. Later on, the  
jury  
26 instructions will be given to you. There are about  
four or  
27 five or six different kinds of fraud that are  
claimed in this  
28 case. Let's start with this.

5907

1 (Paraphrased reading:)  
2  
3 The essential elements of a  
4 claim of fraud by an intentional  
5 misrepresentations are:  
6 Philip Morris must have made  
a  
7 representation as to a past or existing  
8 material fact.  
9  
10 It won't hurt you. We're united in  
your  
11 health. Our products are safe. We'll work closely  
with the  
12 authorities to take care of it.  
13 Mr. Weisman; we'll close the doors if  
we think  
14 it will hurt you.  
15 Mr. Bible; we'll go out of business,  
et cetera,  
16 et cetera, et cetera.  
17 (Paraphrased reading:)  
18  
19 The representations must have

been false.

Philip Morris must have known that the representation was false when it made it.

Or must have made the representation recklessly without knowing whether it was true or false.

Let's think about that. If Philip Morris

5908  
call, did truly, with all of the resources at its beck and  
cancer, why not know for sure whether or not tobacco caused  
in the world should it deny such a thing?  
Why shouldn't it say, gee, we've got  
1,000 scientists over here that say yes, and we've got a  
couple people over here that say no. So, hey, what the  
heck. But they affirmatively said no. But even if she said,  
you know, what -- it's an open question -- they shouldn't  
have, because it wasn't an open question.  
(Paraphrased reading:)  
The defendant must have made the representation with an opportunity to defraud the plaintiff.  
That is, the defendant must have made the representation for the purpose of inducing the plaintiff to rely on it and to act and refrain from relying on it.  
It's another one of these instructions that says the plaintiff -- anyone in the population who listened to this is in the class, anyone, not just Mr. Boeken. Anyone out there.  
(Paraphrased reading:)  
The plaintiff must have been unaware of the falsity of the representation, must have acted in reliance upon the truth of the representation, and must have been justified in relying upon the representation.  
And here is a place where professor Cobbs Hoffman would say, wait a second. Anyone -- this -- anyone who would listen to tobacco industry executives are fools. Anyone who would listen to what their clients executives say, should have their heads

examined.  
would say  
history.  
history. And  
don't have  
such a low  
we are  
we listen  
like this  
once upon  
the  
say, you  
trust  
that if you  
misrepresentation.  
5910

9                Anyone who would believe what a tobacco company  
10          would have to have a developmental defect.  
11                This comes from a professor of U.S.  
12          And this comes from a professor of recent U.S.  
13          I sure hope that future professors of U.S. history  
14          to write that we have sunk to such a situation to  
15          level that we should have our heads examined, and  
16          mentally defective or developmentally disabled if  
17          to what the heads of gigantic corporations say.  
18                Once upon a time in America, people  
19          used to be our leaders and respected, and not only  
20          a time, but now, they get chosen for the cabinet of  
21          government.  
22                But professor cobbs Hoffman would  
23          can't trust them, you shouldn't trust them; if you  
24          them, you're a fool.  
25                What a defense. We're such snakes  
26          trust us, you're a fool. What a defense.  
27                That's called intentional

28          Here's a brother or a sister.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(Paraphrased reading:)

of  
--

3                Expression of opinion.  
4                Ordinarily, expressions of  
5          opinion are not treated as representations  
6          fact upon which to base actionable fraud.  
7                However, when one party  
8          possesses or hold -- this is Philip Morris  
9          when one party holds himself or herself out  
10         as possessing superior knowledge or special  
11         information regarding the subject of a  
12         representation, and the other party is so  
13         situated that he or she may reasonably rely  
14         upon the supposed superior knowledge, a  
15         representation made by the party  
16         possessing -- holding himself or herself out  
17         as possessing such knowledge or information  
18         will be treated as a representation of fact.  
19                When Philip Morris states an  
20         opinion as a fact in such a manner that is  
21         reasonable to rely and act upon the fact, it  
22         is it treated as a representation of fact.  
23  
24                This is called (paraphrased reading):  
25

26 Fraud and deceit,  
concealment.

27 Philip Morris must have  
28 concealed or suppressed a material fact

prior

5911

1 to July 1, '69.

2

3 Which is a magic cutoff date for us

here for a

4 couple of issues. One of the issues in this case

has to do

5 with a failure to warn. And another one of the

issues in

6 this case has to do with a failure to show people

how to

7 properly use a product. And I'm talking about

light

8 cigarettes. And I'm talking about compensation.

And I'm

9 talking about a situation where people who think

they're

10 smoking down to a lower tar cigarette, they really

think

11 they're going to get lower tar, and they don't.

12 Up until 1969, Philip Morris had a

duty to warn

13 the public, anyone, everyone, all users, about the

dangerous

14 propensities of its product.

15 The cutoff date, magically, is July

1, '69.

16 After that time, there was no such duty.

17 Similarly, up until July 1, 1969,

Philip Morris

18 had a duty to warn people who bought light

cigarettes that,

19 guess what, you're buying these low-tar cigarettes,

you think

20 you're going to get less tar, you think you're

going to get

21 less of the bad stuff, you think you've got less of

a chance

22 to get sick. Wrong, wrong, wrong, wrong.

23 After 1969, no such duty claimed in

this case.

24 So back to this.

25 (Paraphrased reading:)

26

27 The defendant must have

28 concealed or suppressed a material fact

prior

5912

1 to July 1, '69.

2

3 We've had a ream, mound, huge pile of

documents

4 in which they conspired to do just that. We're

going to

5 dummy up and not tell anyone about what we know

about what's

6 in these cigarettes and what it does to you.

7 The defendant must have been under a

duty to  
8 disclose that fact to plaintiff and everyone else  
that's  
9 smoking. Obviously, a manufacturer of a product  
has got to  
10 tell -- a reasonable manufacturer of a product has  
got to  
11 tell about the bad side effects, about what's  
really going  
12 on, not give false information, misinformation,  
13 disinformation.

14 (Paraphrased reading: )  
15

16 Philip Morris must have  
17 intentionally concealed or suppressed the  
18 fact with the intent to defraud plaintiff.

19 The plaintiff must have been  
20 unaware of the fact and would have acted --  
21 would not have acted as he or she did if  
22 known of the concealed or suppressed fact.  
23

24 And I want to tell you. I asked  
25 Richard Boeken -- and it's there in the volume of a  
26 deposition. And it's a what-if question. But what  
if they  
27 said -- they said, don't forget, Mr. Boeken was  
aware of the  
28 surgeon general's report. Mr. Boeken was aware

5913  
29 that warnings  
1 were made. Mr. Boeken was aware of what he called  
a --  
2 what's the word -- brouhaha?  
3 MR. CARLTON: Something like that.  
4 MR. PIUZE: A brouhaha or thing-a-ma-jig, a

fight  
5 between the tobacco companies and the surgeon  
general. He  
6 was aware of that. And he listened to it. And he  
said, you  
7 know what, I thought the surgeon general was on a  
political  
8 vendetta. I believed what she said. I listened to  
them. He  
9 and 50 million other people.  
10 Now, was he justified in listening to  
them?

11 We're back to professor Hoffman now.  
According  
12 to professor Hoffman, no. When someone looks you  
in the eye  
13 and makes you promise and tells you, this ain't  
going to hurt  
14 you, don't worry about it. We promise you. You  
are not  
15 entitled to rely on that.

16 Mr. Boeken did. Mr. Boeken is a  
businessman.  
17 Mr. Boeken has expressed admiration for big  
business. His  
18 wife backs that up. His wife said that's the  
centerpiece of  
19 his life. He really, really, really loves it. He

told you

these

responsible

on his videotape deposition he couldn't conceive of people standing up, all of these extremely people, standing up and lying under oath.

He was wrong.

How about the cousin?

(Paraphrased reading:)

Fraud and deceit.

Active concealment of known facts.

Intentional concealment

exists

where a party, while under a duty to speak, does, nevertheless, does so --

THE COURT: No. Under no duty to speak.

MR. PIUZE: Excuse me. That's a sign.

(Paraphrased reading:)

Intentional concealment

exists

where a party, while under no duty to speak, nevertheless, does so, but does not speak honestly and makes misleading statements or suppresses facts which materially qualify those stated.

And the English of that is, if you don't have to say anything, but you do, and it's misleading, and you know it is, and you suck someone in, that's wrong.

Here's another one (paraphrased reading):

Fraud and deceit, false promise.

But I'm tired of reading, and you're listening. There are about seven of these things.

one of these things has to do with fraud. The is fraud. And the issue is, Philip Morris knew

had to know and either lied about it or covered it

dummied it up or didn't let it out or gave

gave disinformation:

Listen to this, please. This is Dr. Farone.

MR. LEITER: Page number, please.

MR. PIUZE: 1549.

MR. LEITER: Thank you.

MR. PIUZE: (Paraphrased reading):

10 About a year and a half after  
11 I had been there, I had been told by  
12 Dr. Osdene on several occasions that one of  
13 his main missions, as he put it, was to  
14 maintain the controversy, meaning, keep  
15 shedding doubt on whether or not Nicotine  
was  
16 addictive and whether or not smoking caused  
17 disease.  
the  
18 It was his job to maintain  
19 controversy?  
20 About whether Nicotine was  
21 addictive?  
22 Even though you knew Nicotine  
23 to be addictive?  
24 It was his job to maintain  
the  
25 controversy about whether tobacco caused  
26 disease.  
27 Even though you knew tobacco  
28 caused disease.

5916  
1 It's an amazing -- this is the guy  
who  
2 said that if the Nicotine studies turn out wrong,  
destroy  
3 them.  
4 This is the guy who said, if the  
tests come  
5 back from Germany, send them to my house. They're  
going to  
6 be destroyed.  
7 This is the guy who showed Dr. Farone  
a test of  
8 a real, honest to God, real Marlboro cigarettes  
back around  
9 '79 or '80 that had been done for biological  
activity, and  
10 this has been a document that has never been found.  
This is  
11 a document that Philip Morris denies the existence.  
Never  
12 happened. Couldn't have happened.  
reading):  
13 This is page 1560 (paraphrased  
14  
15 Dr. Osdene was a colleague of  
16 mine. It was his responsibility to do  
safety  
17 testing on cigarettes. The way this was  
done  
18 was to have the tests done in Europe and  
19 Philip Morris -- at the time, I didn't know  
20 Philip Morris actually owned a facility, but  
21 Philip Morris used a facility in Germany  
22 called the, in German, the institute for  
23 biological technology. The ACRONYM is  
24 inbifo, and that was a laboratory in Germany  
25 where products were sent to be tested for  
all  
26 of the kind of testing that we just talked  
27 about, the in vivo testing as well as the in



23  
24 You would agree that there's  
25 no such thing as a safe cigarette; is that  
26 right?

27 And Dr. Farone said, I think  
28 I've testified in the past -- I've given

5919           1         parameters of how we could state that a  
2             cigarette could be safe where you couldn't,  
3             epidemiologically, tell the difference  
4             between the use of that cigarette and  
5             nonsmokers; but I mean, in terms of a normal  
6             cigarette, there's no such thing as a  
7             cigarette., a normal cigarette on the market  
8             right now that's absolutely safe.

9 Is it your testimony there  
10 could be a safe cigarette on the market  
11 today?

Cambridge  
16 was on the market today, and Cambridge was 0.1  
milligrams of  
17 tar. What if?

And in  
27 the 1980's, that cigarette had the lowest tar  
figures ever,  
28 ever seen, ever anyplace on a cigarette, and it was

hard to  
5920  
1 light.  
2 I already mentioned this morning that  
flavor  
3 and Nicotine could both be put in the filter. I  
asked  
4 Philip Morris' witness, tell us you tried that or  
tell us  
5 that you can't do it, whatever the question was.  
He  
6 wouldn't. Dr. Farone said both of those things  
could be  
7 done., but it was hard to light.  
8 And look what happened with that 20  
years  
9 later, and we come in here with an electronic gizmo  
that

10 gives you seven puffs with a cigarette -- do it  
with some  
11 sort of a battery. Hard to light. Hard to catch  
cancer.  
12 Impossible to catch cancer.  
13 Dr. Farone says there is such a thing  
as a safe  
14 cigarette, but they didn't want to pursue it. And  
while I'm  
15 on it, let me take two minutes there.  
16 There was more than a day reading of  
these  
17 depositions. Uydess, Mele. One of them was a rat  
18 researcher. He was a Nicotine researcher. The  
research was  
19 being done in Richmond, Virginia. It was done  
under secret  
20 conditions. The rats were brought in, covered up  
with --  
21 they had tarps on them, and no one was supposed to  
know they  
22 were there. And they were secret animal labs, and  
no one was  
23 supposed to know about this. And it was all top  
secret.  
24 What they figured out was that these  
rats were  
25 just as hooked on Nicotine as they would have been  
on  
26 cocaine. And there are several documents either  
that you  
27 will see or that I'll get to and read that flat out  
say, a  
28 lot of people in science say that Nicotine is just  
as  
5921  
1 addictive as heroin.  
2 And Dr. Benowitz said that, too, when  
he was  
3 hear. And Dr. Benowitz is probably the world's  
single  
4 leading authority on Nicotine injection in the  
world. And  
5 when the surgeon general needed someone to write  
his report  
6 on addiction, that's where he went, to Neil  
Benowitz.  
7 Anyway, one of those two depositions  
revolved  
8 around the entire fact that Philip Morris was  
conducting --  
9 keeping secrets from everyone else in richmond,  
experiments  
10 about rats wanting and needing and craving and  
being addicted  
11 to Nicotine. And that program one day was just  
shut down by  
12 authorities, people from New York. The people from  
New York  
13 took a look around, and the next thing you knew,  
the entire  
14 project was history.  
15 And the other guy, Uydess. He was on

the nod  
some  
Really bad  
was, gee,  
him and/or  
that was  
prematurely.  
between the  
people would  
business would  
products  
the  
5922  
company.  
the board  
little bit  
Farone  
than  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

16 project. And the nod project had to do with taking  
17 really, really, really bad stuff out of tobacco.  
18 stuff. And so you heard here the way it worked out  
19 it smelled.  
20 Well, the testimony you heard from  
21 Dr. Farone -- one or both, I'm not sure -- was that  
22 a viable project, and that project was set down  
23 If, in fact, there was a difference  
24 two brands that were being sold, the concern was  
25 always migrate to the safer one. And a lot of  
26 have been lost. You would have had to change the  
27 too often.  
28 And then he said that he heard about  
gentleman's agreement the week that he joined the  
company.  
This proper proposal that I had up on  
talked about politics, so I just want to talk a  
little bit  
about politics.  
This is page 1500. This is Dr.  
testifying.  
(Paraphrased reading:)  
Dr. Seligman, who became my  
boss, was very clear on the two main  
functions that they were interested in my  
helping them with. Based on my background,  
one was diversification into areas other  
than  
cigarette products. And the second was  
making the product, the cigarette product,  
safer.  
Seligman and Wakeham and  
Resnick indicated they were concerned that  
the cigarette industry would face increasing  
regulation, the products would be either  
banned or changed approximately in five to  
ten years. They were thinking they'd have a  
great deal of difficulty selling products,  
therefore, they wanted to take the  
opportunity to move into other businesses,  
while, at the same time, trying to improve  
the safety of the product.  
In 1976, they thought they had five  
years of unfettered business.

to ten more  
2



20 Richard Boeken, who's been giving us his money  
since 1957  
21 when he was 13 years old, and who's been hooked on  
this  
22 product for the last 50 years, since he was 13  
years old,  
23 must perceive and must understand and must believe  
in  
24 evidence that will sustain his opinion that smoking  
may not  
25 be the causal factor to cancer.  
26 So they're going to feed him and 5 or  
10 or  
27 15 or 20 or 40 million other people a little bit of  
28 disinformation.

5925

1 (Reading: )  
2

3 "As things stand, we supply  
4 them with too little in the way of

ready-made

5 credible alternatives."

6 "The alternatives."

7 Two of them.

8 "1. The constitutional  
9 hypothesis. People who smoke tend to differ  
10 importantly from people who do not in their  
11 heredity, in constitutional make-up, in  
12 patterns of life and in the pressure under  
13 which they live.

14 "2. The multifactorial  
15 hypothesis. As science advances, more and  
16 more factors come under suspicion as  
17 contributing to the illness for which

smoking

18 is blamed -- air pollution" . . .

19

20 Air pollution. Los Angeles. Early

'70's.

21 Might not be able to see your hand in front of you

again.

22 That's what's causing your cancer. It isn't

cigarettes.

23 It's that.

24 (Paraphrased reading: )

25  
26 Viruses, food additives,  
27 occupational hazards, stresses."

28 In 1970, our public opinion

5926

1 survey showed that 52 percent believed that  
2 cigarettes are only one of many causes of  
3 smokers having more illnesses. It also  
4 showed that half of the people who believed  
5 that smokers have more illnesses than  
6 nonsmokers accepted the constitutional  
7 hypothesis as the explanation.

8 Thus, there are millions of

9 people --

10 and I want to stop here again.

11 Millions of people, including Richard

12

Boeken --

other  
who was a  
become a  
one of  
message.  
not Richard Boeken alone, not Richard Boeken and  
members of alcoholics anonymous, not richard Boeken  
hippie, And not Richard Boeken who is going to  
conservative businessman -- but Richard Boeken, as  
millions of people who would be receptive to a new

And the new message is (reading):

"Cigarette smoking may not be  
the main health hazard that the anti-smoking  
people say it is because other alternatives  
are at least as probable."

So in 1972, the tobacco institute  
decided that  
misinformation,  
people to  
keep them smoking, to keep money rolling in. And  
unfortunately, to keep the undertaker busy.  
This one document -- this is exhibit  
330. This  
that shows  
conduct of  
this  
country, this is it right here. 330.  
I'm done with this kind of document.  
Promise.

1974. June. Lorillard.  
(Paraphrased reading:)

Historically, the joint  
industry-funded smoking and health research  
programs have not been selected against  
specific scientific goals, but rather, for  
various purposes, such as public relations,  
political relations, position for  
litigation,  
et cetera. It seems obvious that reviews of  
such programs for scientific relevance and  
merits in the smoking and health field are  
not likely to produce high ratings. In  
general, these programs have provided some  
buffer to public and political attacks of  
the  
litigious  
industry, as well as background for  
strategy.

I'm showing you to show conspiracy --  
(reading):

5928  
1  
"CTR is the best and cheapest

2 insurance the tobacco industry can buy, and  
3 without it, the industry would have to  
invent  
4 CTR or would be dead."  
5  
6 And the amazing thing is, whoever  
wrote that,  
7 forget that the tobacco industry did invent CTR, or  
it would  
8 have been dead.  
9 And this that we spent too much time  
on in  
10 1978, Dr. Summers, states that (paraphrased  
reading):  
11  
12 The CTR should be renamed for  
13 council for legally permitted tobacco  
14 research.  
15  
16 Imagine that. Before we can do our  
research,  
17 we will have to run it past our lawyers. Our  
lawyers will be  
18 in charge of the safety and research for our  
company. Not  
19 our scientists, not our doctors, but our lawyers  
will be in  
20 charge of the research for the company.  
21 And he talks about the fact that they  
lost  
22 Dr. Craighead. And there are two other documents  
which I'm  
23 not going show you, because I just don't want to  
beat this  
24 unmercifully to death, where there was talk about  
other  
25 people leaving the programs, other scientists  
leaving the  
26 programs because they can't put up with the outside  
pressure.  
27 Now, I'd like to talk about Mr.  
Boeken.  
28 Maybe it's best just to put it here.  
If you  
5929  
1 want to bring one of those easels, you can.  
2 Do you like being there?  
3 Nice tie.  
4 MR. GOLDSTEIN: Thank you.  
5 MR. PIUZE: This is last time you're going  
to get to  
6 see this, probably. And I APPRECIATE your  
attention in  
7 looking at it.  
8 This is a history in which we have  
tried to  
9 overlap what went on in Mr. Boeken's life with what  
went on  
10 in science with what went on in the misinformation,  
11 disinformation, lying of the tobacco industry and  
12 Philip Morris.  
13 And this story covers, it looks like,  
50 years,

14 almost. And unfortunately -- have you got that  
now?

15                         Here, let me slide this up here.  
16                         Unfortunately, Philip Morris fessed

up too late  
17                         for Mr. Boeken. Just remember, as you look at this  
document  
18                         here, every, single year on this document is  
400,000 lives  
19                         that end prematurely from smoking in this one  
country. Just  
20                         remember that of those 400,000, Philip Morris has  
half the  
21                         market share. 200,000 every succeeding year.  
22                         And also, please remember that for  
each and  
23                         every single year you see here, roughly up to  
75,000, in  
24                         round numbers, people die in the United States of  
lung cancer  
25                         caused by smoking and tobacco and Philip Morris has  
26                         50 percent of that share.  
27                         So every year, it's 175,000 lung  
cancer deaths  
28                         that are preventable from smoking. And every,  
single year is  
5930  
1                         400,000 deaths overall that's preventable from  
smoking.  
2                         Mr. Boeken, according to the only  
evidence  
3                         we've had in this trial, uncontested from Dr.  
Hammer, right  
4                         here -- or right here -- had lung cancer. 1989.  
He didn't  
5                         know it. His doctors didn't know it. Those little  
cells  
6                         were multiplying and multiplying and multiplying.  
It got ten  
7                         years worth of multiplying to get to the size where  
it showed  
8                         up.  
9                         But way back in 1989, it was already  
too late  
10                         for him. So by the time that Philip Morris decided  
to change  
11                         its position, as Ms. Merlo said -- or excuse me --  
by the  
12                         time, alternatively, that Philip Morris and the  
other  
13                         tobacco companies got cornered, put in a corner  
from which  
14                         they couldn't escape, and put up their hands and  
15                         surrendered -- sort of, depending on how you look  
at it -- it  
16                         was already ten years late for Mr. Boeken because  
he was  
17                         going to get cancer, and lung cancer is not a  
curable  
18                         disease.  
19                         Slide that back now, if you would,  
please.  
20                         1912, Titanic went down. More people



5932

1 out a couple and flash them at you, and I may not.

I'll flip

2 a coin.

3

ultimately.

4

We've heard

5

and what his

6

about him.

7

guy,

8

guy.

9

10

tough,

11

the back of

12

this guy.

13

sitting there

14

hat on.

15

buying his

16

Marlboro

17

18

This was his

19

20

don't fault

21

sinker.

22

stories

23

know that

24

greatest

25

And

26

entire thing.

27

he's always

28

whether

5933

1

whatever,

2

it's red or gold or tan or platinum or ultra or

3

it's Marlboro, Marlboro, Marlboro, Marlboro.

smoking. He

4

wasn't alone

5

when he started smoking.

6

In these years here, '50's and '60's,

according  
this  
in here  
CBS  
of his  
on and on  
another time  
the jury  
a  
That's the way  
to  
Ludmerer,  
Dr. Doll,  
a  
that. But the  
24  
25  
was a big  
you want to  
27  
people. These  
28  
scientists.  
5934  
of these  
face, you got  
statement.  
Then just --  
have --  
actually  
liked the  
Boeken had a  
choice.

7 to a defense expert, up to 60 percent of the men in  
8 country smoked. And you know, there was testimony  
9 about Eric Severeid, who was an extremely famous  
10 newscaster who gave the news with a cigarette out  
11 mouth, on the tonight show and the today show and  
12 and on.  
13 For those of you who were born in  
14 and another place, This is the way it was. When  
15 back then left this room for a break, everyone had  
16 cigarette, or lots of people had cigarettes.  
17 it was.  
18 So here we go.  
19 By here, by right in here, according  
20 Dr. Doll, and by right in here, according to Dr.  
21 right in there, depending on the words they used,  
22 no reasonable scientist could say that there wasn't  
23 link -- or maybe it was Dr. Feingold that said  
24 handwriting was on the wall, huge, right in here.  
25 Dr. Ludmerer says down here, there  
26 consensus of scientific opinion. Whatever words  
27 use. These are scientists now. These aren't  
28 aren't people out in the open world. These are

1 So what happens to the manufacturer  
2 consumer products when it's put right in their  
3 a big problem here?  
4 This is ten years after the Frank  
5 Now, everyone's against you. What's up?  
6 Denials and denials and denials.  
7 let this drop a little bit.  
8 Then followed by -- I guess we don't  
9 creating doubt about the health charge without  
10 denying it.  
11 Mr. Boeken met a woman. Mr. Boeken  
12 woman. The woman didn't like cigarettes. Mr.  
13 choice. Boy, she was a nice woman. There go the

cigarettes.

14                  For how long?

15                  Three weeks. And then the woman

wasn't as

16                  important as the cigarettes.

17                  Just remember one of those documents

I read to,

18                  a Philip Morris document that said that the

Nicotine is right

19                  up there with eating and copulating. Think about

it. The

20                  Nicotine is right up there with eating and

copulating; one of

21                  the necessities of life.

22                  And so he quit for three weeks there.

He quit

23                  because he wanted the lady more than he wanted the

cigarette.

24                  And then after three weeks, he didn't want that

lady anymore,

25                  and he wanted the cigarette more. He described his

26                  withdrawal symptoms, and they were classic.

27                  One of the issues that I thought was

going to

28                  occur in this case was a fight over whether or not

Mr. Boeken

5935

1                  was addicted or not. But that's a fight that

didn't happen.

2                  Because the defendants' last accident expert

witness said, I

3                  changed my mind. He was addicted.

4                  In 1966, I think, the first warning

labels went

5                  on tobacco. And it's important for all of you

younger jurors

6                  to realize that during this whole time, there were

no

7                  warnings. There were no warnings of any kind.

There was

8                  nothing.

9                  And right in here, the first warnings

went on.

10                 And the first warning said, cigarette smoking may

be

11                 hazardous to your health. May be. Surgeon

general.

12                 And then when we get up here into

1969, the

13                 second warning label goes on, and that warning

label says,

14                 cigarette smoking is hazardous to your health.

15                 Did everyone believe that?

16                 No.

17                 Was there a reason why everyone

didn't believe

18                 that?

19                 Yes.

20                 Was it an accident that everyone

didn't believe

21                 that?

22                 No.

23                 Was there a reason for creating doubt

about the

24 health charge without actually denying it?

25 Sure.

26 What was the reason?

27 Do you have this?

28 Can you hold onto that?

5936

1 That is the reason.

2 Here's the proper proposal right here.

3 Mr. Boeken had bronchitis starting when he was a  
teenager.

4 Mr. Boeken would smoke cigarettes through his  
bronchitis.

5 Some of us know how that is. Mr. Boeken wanted to  
be able to

6 run. Cigarette smoking interferes with your  
ability to run.

7 Mr. Boeken didn't like the  
bronchitis, and he

8 tried to quit here and he tried to quit here.

9 Did he know that smoking was bad for

some sorts

10 of his health?

11 Yes.

12 Did he know that it wasn't good for  
bronchitis?

13 Yes.

14 Did he know that it would screw up  
his ability

15 to run?

16 Yes.

17 Did he believe it would kill him?

18 No.

19 Did he believe it would cause lung  
cancer?

20 No.

21 Did he believe it would cause serious  
illness

22 and disease?

23 No.

24 Why not?

25 How could he be so dumb?

26 Well, he could be so dumb because he  
listened

27 to them.

28 The incredible, unbelievable  
diabolical defense

5937

1 in this case is, if he listened to us, the hell  
with him. If

2 he listened to what we said, the hell with him.

3 1980. Two things happen. 1980. He

goes to

4 see Dr. Trabulus. You're going to see Dr.  
Trabulus' records.

5 Someone said there were all these things in the  
records about

6 when the doctor told him to stop smoking. That  
ain't right.

7 Look at the record.

8 But he saw Dr. Trabulus and he laid  
out his

9 history, and I'm sure Dr. Trabulus talked to him

about  
quoted  
to stop.  
going to give  
meant. And  
addicted. That  
addicted.  
hypnotized, and  
not  
stuff here  
skipped.  
war going  
of the  
some dope for  
tired. Made  
heck with  
5938  
roll band,  
Very  
scared to death  
substance.  
of it, he  
that  
years.  
the V.A.  
He said  
drinker. I  
Doesn't  
he went  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
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27  
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1  
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13  
14  
15

smoking. Mr. Boeken said in his deposition --  
Dr. Trabulus as saying, I'm not going to tell you  
And Mr. Boeken understood that to mean, I'm not  
you a lecture, but I understood exactly what he  
Dr. Trabulus told you, this guy was hooked.  
At any rate, in 19 -- meaning  
because his doctors, his own doctors, saying, he is  
In 1980, same here. He went to see  
Dr. Trabulus. He and his sister went and got  
he stopped smoking for 35 to 40 days. And he could  
maintain it.  
And you know, I skipped a bunch of  
that we heard earlier. But here's one thing I  
In the navy. '65 to '65. Vietnam  
on. Knee surgery -- I'm sorry -- leg injury. Out  
navy.  
Hippie. Living in a van. Smoked  
a couple of years. Didn't like it. Made him  
him eat too much chocolate. Gave it up. Said the  
it.  
1970, went north. Formed rock and  
which didn't happen. Injected himself with heroin.  
dangerous substance. In three months, he got  
of it. Now, heroin is an addictive, addictive  
But he was scared of it. And because he was scared  
kicked it. And he went on a methadone program, and  
methadone program lasted for approximately three  
Started in the San Francisco bay area, ended up at  
on Sawtelle over in West L.A. And he kicked it.  
He saw himself as drinking too much.  
on the videotape deposition he was never a daily  
don't know how much he drank. I got no clue.  
matter. He saw himself as drinking too much. And  
to AA. He went to AA to get clean and sober.

at AA? 16 And in 19 -- what was the year he was  
This guy 17 1976, I think. Clean and sober.  
totally 18 hasn't had a drink, hasn't had any drugs other than  
with that. 19 prescription drugs or Nicotine for 25 years. Went  
20 straight. No one disputes that. No one disagrees  
21 He's extremely proud of that.  
meetings. 22 He met his wife to be at one of these  
23 She made an interesting comment when she was up on  
the 24 witness stand here.  
25 When she found out -- maybe through  
her own, 26 I'm not sure -- but when she found out that people  
were 27 saying, Nicotine was a drug, it got her all upset  
because she 28 had been clean and sober since 1976, and to think  
that she 5939  
1 really hadn't been, that smoking Marlboros was  
taking drugs 2 really upset her. And she testified here that when  
she was 3 in AA, they never, ever told them it was a drug.  
4 But I'd like to finish up here just  
before our 5 break by quoting Mr. Boeken, Ms. Boeken, I think  
when you 6 Dr. Benowitz, for this purpose: When you go to AA,  
7 go to alanon meetings, go to meetings where there  
are people 8 addicted to substances, smoke, cigarette smoke,  
cigarette 9 smoke, cigarette smoke, more cigarette smoke.  
10 outside of the 11 Mrs. Boeken talked about sitting  
hear the 12 meetings on a patio and smoking where you could  
door. Her 13 meetings through the windows. Through the open  
go with his 14 son testified when he was a little kid he used to  
be 15 mom and step dad to AA meetings and everyone would  
kicked 16 be smoking. People that had kicked all kind of drugs,  
addicts 17 alcohol, they were all smoking.  
smoking. 18 Dr. Benowitz testified about drug  
19 strange thing, 19 getting off heroin, getting off other drugs  
effort 20 Smoking. Smoking cigarettes. And so it's a  
21 but these people who spent so much time and so much  
22 successfully. 22 and give so much of themselves to get off of these  
substances, alcohol and heroin, and doing it

23                   kept smoking.  
24                   Now, why would that be?  
25                   Well, there's a couple of reasons,  
but one  
26                   strikes me as far as Mr. Boeken is concerned.  
27                   He knew heroin was bad for him. He  
quit.  
28                   There wasn't anyone out there that was saying to  
him, you  
5940  
1                   know, what; heroin might not be so bad after all.  
We've run  
2                   some studies. We know. We've got scientists.  
Heroin may  
3                   not be so bad after all.  
4                   He thought he was drinking too much,  
and he  
5                   quit that. And there was no one out there  
whispering to him,  
6                   hey, it's not what it's cracked up to be, don't  
believe those  
7                   people. There are other reasons.  
8                   But when it came to cigarettes,  
whether he was  
9                   rationalizing things, whether he was telling  
himself stories,  
10                  whether -- as Dr. Benowitz said, an addict is  
someone that  
11                  has to have something, and if there's a reason out  
there to  
12                  justify it to himself or herself, they'll grab onto  
that  
13                  reason -- he bought their line. And he kept  
smoking. He  
14                  knew it wasn't good for him, bronchitis-wise. He  
knew it  
15                  wasn't good for him, running-wise. And he made  
continuing  
16                  attempts to try to get off of it.  
17                  But as far as, you're going to be  
dead, he  
18                  bought into this. And now when I'm done, there  
were certain  
19                  burdens that I've got in this case, burdens of  
proof. We'll  
20                  talk about that after this break.  
21                  But when I'm done and I sit down, I  
want to  
22                  pass the burden onto Philip Morris, and I want to  
say, I want  
23                  to hear, why in the world should he be criticized  
for  
24                  believing what you told him to believe?  
create  
25                  That if you went out of your way to  
story,  
26                  doubt about the health risk and he bought into your  
27                  how in the world can you be hypocritical enough now  
to blame  
28                  him for that?  
5941  
1                   Your Honor, do you want me to finish  
this chart

2 or do what?  
3 THE COURT: No. I think we really do need  
to take our  
4 break.  
5 Thank you very much.  
6 Ladies and gentlemen, we'll be back  
at 3:20.  
7 Don't discuss the case with anyone.  
8 Try to be back here promptly.  
9  
10 (RECESS.)  
11  
12 THE COURT: Our jury panel is back with us;  
counsel  
13 are present as well.  
14 Mr. Piuze.  
15 MR. PIUZE: Thanks.  
16  
17 (Videotapes being played.)  
18  
19 MR. PIUZE: Used to be that at night,  
instead of  
20 seeing ads for donating money to homeless shelters  
and giving  
21 free water to flood victims and doing all those  
great things,  
22 it used to be that every, single night when people  
turned on  
23 their television sets in this country, what you  
just  
24 saw -- the white is the area that was not sponsored  
by  
25 tobacco.  
26 And so if someone turned on their  
television  
27 set in the '50's or the '60's, tobacco commercials  
were  
28 everywhere all the time. It's a nice thing. It's  
good for  
5942  
1 you. Look how healthy it is. If you want to be a  
cowboy,  
2 et cetera. And you know what?  
3 Good advertising is good advertising.  
But for  
4 those of us who have been brought up under  
proposition 99 or  
5 if we see alligators or see tobacco company  
executives  
6 smoking in the room, laughing diabolically --  
7 MR. LEITER: Objection. Outside the  
evidence.  
8 MR. PIUZE: Ms. Merlo talked about that.  
9 THE COURT: Proceed.  
10 MR. PIUZE: Mrs. Merlo said she was  
one of  
11 them. The kind of warnings that out are there now.  
12 Boom, boom, boom; don't, don't,  
don't, don't.  
13 With respect to -- And the kind of  
stuff that  
14 said do, do, do, do were everywhere all the time.  
15 Look at -- all the time. So that's

when  
Just  
them  
blame at  
that  
was there.  
5943  
everyWHERE.  
at this  
all of  
talked  
They're  
He  
these ads  
designed to  
mean, if  
going  
to show  
these ads.  
sure.  
Greenbay  
deposition  
fringe  
because  
think, a  
Europe in

16 Mr. Boeken was brought up. Right there.  
17 That's Philip Morris advertising.  
18 happened to be on a particular season --  
19  
20 (juror sneezes.)  
21  
22 MR. PIUZE: Bless you.  
23 -- 1963. And I find no fault with  
24 advertising their product. I'm not pointing any  
25 them for advertising their product.  
26 But I'm simply showing all of you  
27 Mr. Boeken, when he turned on his television, it  
28 It was everywhere. It was in magazines. It was on  
1 billboards. It was on television. It was on  
2 And it wasn't warnings. It was, look  
3 great cowboy. Look at -- I'm not going to show you  
4 them, but just a quick selected sample here that he  
5 about in his deposition.  
6 Look at those guys. They're marines.  
7 the fighters. Yeah. Marines. That's what I like.  
8 thought one of them might be John Wayne.  
9 And we heard commentary on all of  
10 from professor Goldberg about what they were  
11 attract. And again, I find no fault whatsoever. I  
12 they're going after kids, I find fault. If they're  
13 after adults, I don't find fault. But this is just  
14 you what he was exposed to.  
15 And there are no warnings in any of  
16 That's the only one I recognize for  
17 Paul hornig. Notre Dame. Smoked Marlboros.  
18 packers.  
19 And then later, this.  
20 And we heard from Mr. Boeken in his  
21 that he had the jacket. He went out and bought the  
22 suede Jacket. He did everything but buy the horse,  
23 he couldn't have a horse. And he got himself, I  
24 Triumph 650 over in England instead when he went to

25                   1966.  
26                   And by the time he met his stepson,  
now he had  
27                   a Harley. So he had his motorcycle, as I said, he  
said in  
28                   his deposition, instead of a horse, but that's how  
he saw

5944  
1                   himself. That guy. Right there.  
2                   Strangely enough, his wife used to  
call him her  
3                   Marlboro man. I mean, what is that message of that  
guy  
4                   leaping over that fence?  
5                   It's not, you're going to get sick.  
6                   Now, it's okay for Marlboro guys to  
smoke light  
7                   cigarettes. And gee, he did.  
8                   I'm going to get to light cigarettes  
in just a  
9                   bit.  
10                  So anyway, in the 1950's and the  
1960's when  
11                  Mr. Boeken was a kid and a young man and a young  
adult, he  
12                  didn't see what we see today. He didn't see  
negative,  
13                  negative, negative, don't do it, don't trust them,  
don't  
14                  believe them, alligators, smoke-filled rooms.  
15                  He saw cowboys, and he saw tough  
guys, and he  
16                  saw people who said, you said it's cool and  
sophisticated.  
17                  This is the way it is.  
18                  Someone here -- it was professor, Dr.  
Ludmerer  
19                  said, you don't want to be judging medical science  
by  
20                  hindsight. And I asked him, is that true of  
regular human  
21                  beings, too?  
22                  Do you want to judge regular human  
beings by  
23                  hindsight?  
24                  And he said, it's not a good idea  
judging  
25                  anyone by hindsight.  
26                  And so when the time comes for Philip  
Morris to  
27                  say, tough -- like Richard Boeken -- tough luck to  
you, I ask  
28                  you to judge Mr. Boeken not in hindsight, but I ask  
you to

5945  
1                  judge Mr. Boeken by the times that he was in.  
2                  And you know what?  
3                  I will extend the same; that's what's  
good for  
4                  the goose is good for the gander courtesy to Philip  
Morris.  
5                  Let's not judge them in hindsight. Let's judge  
them by what

line back  
6       they knew at the time. So before I put this time  
7       up here, don't forget. This is what Mr. Boeken was  
doing.  
8       This is what the industry was doing. This is what  
knowledge  
9       was doing.

10                  Let me just jump back a little bit,  
if I could,  
11                  to Philip Morris.  
12                  Can we see there, too, the scientist  
and the  
13                  executive, please.  
14                  1976.

15  
16                  (Videotape being played.)  
17  
18                  MR. PIUZE: So that's the scientist.  
19                  Let's hear from the executive. '76.  
20  
21                  (Videotape being played.)  
22

23                  MR. PIUZE: Two years earlier, two people  
over at the  
24                  Lorillard tobacco company shared this confidential  
memo,  
25                  which we've seen. This blowup is not going to be  
available.  
26                  This will be in a much, much smaller size.  
27                  But i'd like to use a couple of your  
precious  
28                  minutes and our precious minutes to discuss this.

5946  
1                  1974 (paraphrased reading:)

not  
1                  The joint industry funded  
2                  smoking and research programs have not been  
3                  selected against specific scientific goals,  
4                  but rather for various purposes, such as  
5                  public relations, political relations,  
6                  positions on litigation,  
7                  et cetera. It seems obvious that reviews of  
8                  such programs for scientific relevance and  
9                  merit in the smoking and health field are  
10  
11

12                  likely to produce high ratings. In general,  
13                  these programs have provided some buffer to  
14                  public and political attack of the industry,  
15                  as well as background for litigious

strategy.  
16  
17                  Four years later, Lorillard  
(paraphrased  
18                  reading):  
19

of  
20                  We have again "abdicated" the  
21                  scientific research directional management  
22                  the industry to the "lawyers" with virtually  
23                  no involvement on the part of scientific or  
24                  business management side of the business.  
25                  Lorillard's management is  
26                  opposed to the total industry future being



-- and he

15            said, yeah, well, that's the allegation.  
16            Anyway, whether they want to distance

--

17            whether Philip Morris wants to distance itself from  
this man,  
18            a very high-ranking responsible -- we never heard  
he was  
19            fired. We never heard he was kicked out. We never  
heard he  
20            was denied his pension. We never heard anything  
about him,  
21            except he's still around.

22            This guy says, honest science will  
dig our  
23            grave, and honest science is totally detrimental to  
our  
24            position and underlies the public posture we take  
to  
25            outsiders.

26            And so that leaves us, I think again  
--

27            everybody, the court, counsel, ladies and gentlemen  
-- I  
28            thank you for your patience here. But that leaves  
us with my  
5949

1            last topic that I'm going to be able to get to  
today, and I  
2            promise I will finish as quickly as I can tomorrow.  
3            This first one Dr. Hoshizaki did not  
agree to.

4            So it's up there, but she didn't agree to that.  
5            I made this little chart here showing  
what  
6            Lorillard thought of the CTR versus what Philip  
Morris  
7            thought of the CTR. And she pointed out, well, it  
wasn't  
8            Philip Morris. It was just Dr. Osdene.  
9            I'd like to tell you in advance, this  
is before  
10            you ever saw, and certainly, before she ever saw,  
the memo  
11            that I showed you earlier where three Philip Morris  
12            high-ranking executives called CTR a front and a  
shield.  
13            That was their words. Philip Morris' words were  
front and  
14            shield.  
15            But anyway, at the time and without  
the benefit  
16            of that information, either for her or the jury,  
this chart  
17            was set up, and it shows that Lorillard believed  
that the CTR  
18            was a political front, public relations front, a  
litigation  
19            front, and it was being run by lawyers.  
20            On the other hand, Dr. Osdene didn't  
like the  
21            biomedical research that was being done there. And  
a

22 question was asked, which was sort of -- by Mr.  
Carlton on  
23 redirect examination -- well, it really can't be  
both of  
24 those things at the same time, can it?  
25 And you know what?  
26 It can.  
27 So the rough analogy -- and it is  
rough -- that  
28 I thought of is as follows: CTR is a cat.  
Lorillard is a  
5950  
1 mouse. Philip Morris is a Rottweiler. Now, when  
the mouse  
2 describes what a cat is, imagine what the mouse  
would say.  
3 But when the Rottweiler describes what the cat is,  
that dog  
4 sees the cat in a slightly different way.  
5 Here, Lorillard -- and I'm not here  
to praise  
6 Lorillard -- but here, Lorillard, through its  
management,  
7 thought that the committee for tobacco research was  
a front,  
8 was a shield, was for political reasons, was for PR  
reasons,  
9 was for litigation reasons and was something cooked  
up by a  
10 bunch of lawyers who were running a company,  
running an  
11 organization, running the industry.  
12 Philip Morris is in a totally  
different  
13 position. Philip Morris was a different kind of  
company, and  
14 Philip Morris saw it differently. And I'm sure as  
heck not  
15 here to praise Philip Morris.  
16 Philip Morris saw it as something  
that  
17 threatened its position in the marketplace because  
it was  
18 doing honest to God research. And anyone in the  
mid '70's or  
19 earlier that was doing honest to God research was  
20 jeopardizing Philip Morris' financial position.  
21 And I cannot put it any better than  
Dr. Osdene  
22 put it. Honest research digs Philip Morris' grave.  
Honest  
23 research is totally detrimental to Philip Morris'  
position.  
24 Honest research undermines the public posture that  
they've  
25 taken with outsiders.  
26 One those outsiders that it took a  
position  
27 with is my client, Richard Boeken, who's dying of  
lung  
28 cancer -- and he couldn't even stick around for  
oral argument  
5951

1           here today.  
2                         So in 1977 -- I got through the 70's  
when I  
3           stopped and I interrupted to show that chart.  
4                         But in the 1970's, if we want to  
judge  
5           Richard Boeken and we want to find out why he did  
certain  
6           things, let's think about who was molding his  
thought. Let's  
7           think about who was putting thoughts in his mind,  
was  
8           channelling what was being done.  
9                         Philip Morris thought the truth would  
dig its  
10          grave. And you know what?  
11                         It would have.  
12                         And you know what?  
13                         I hope it does.  
14                         And you know what?  
15                         Tomorrow morning, I'm going to  
describe how it  
16          should be done.  
17                         Thank you for listening.  
18          THE COURT: All right.  
19                         Ladies and gentlemen, it's now 4  
o'clock.  
20                         We'll see you tomorrow morning at  
8:45.  
21                         Try to be prompt.  
22  
23                         (AT 4:00 P.M., AN ADJOURNMENT WAS  
TAKEN  
24                         UNTIL Friday, May 8, 2001 AT 9:00  
A.M.)  
25  
26  
27  
28